



## MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen  
*Chair*

Kenita V. Barrow  
*Vice Chair*

**March 9, 2016**

**Waiver 16-02-001**

Pursuant to § 19A-12(b)(1)(B) of the Public Ethics Law, a public employee must not be employed by a business that negotiates or contracts with the County agency with which the public employee is affiliated, unless the Ethics Commission grants a waiver.

Peter C. Fosselman became an employee of Montgomery County in November of 2015 working in the Office of the County Executive as the White Oak Science Gateway Coordinator. He filed a request for outside employment to continue his compensated outside employment as the Mayor of the Town of Kensington. His outside employment request was recommended to the Ethics Commission for approval by the agency head for the Office of the County Executive, the Chief Administrative Officer. The Ethics Commission staff notified Mr. Fosselman that because the outside employment request application indicated that the Town of Kensington negotiates or contracts with the Office of the County Executive, he would need a waiver of the prohibition in § 19A-12(b) of the Public Ethics Law on outside employment with a business that is regulated by or negotiates or contracts with his agency.

Mr. Fosselman has submitted a request for a waiver to the Ethics Commission along with a recommendation for approval by the Chief Administrative Officer. The request details the responsibilities of the position as Town of Kensington Mayor, especially insofar as they relate to Montgomery County government. Mr. Fosselman's request states that he, in his capacity as Mayor, has taken steps to avoid making communications on behalf of the Town of Kensington to Montgomery County or be involved in matters involving the County, such as the renovation of the County owned Noyes Children's Library in Kensington. Mr. Fosselman has stated that he will recuse himself from Town matters in which the County is a party or has a substantial interest.

In his request for a waiver, Mr. Fosselman also describes his position with the County and the position's focus on the White Oak Science Gateway. The Gateway is not contiguous with the Town of Kensington. Since starting with the County in November, Mr. Fosselman indicates that he has avoided working on County matters where the Town is a party or has a significant interest in a matter.

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**100 MARYLAND AVENUE, ROOM 204, ROCKVILLE, MARYLAND 20850**  
**OFFICE: 240.777.6670 FAX: 240.777.6672**

Some of the language in Mr. Fosselman's request letter was unclear as to the extent of the steps he would take to avoid conflicts of interest. For example, he states:

I do interact from time to time with Montgomery County Government staff and elected officials as the Mayor. At times, the Town takes a position with respect to zoning matters within its borders, and seeks to support various initiatives that affect the Town. It is the Town's practice that I, as Mayor, sign the letter conveying the Town's position to the County and its branches of government, even though I do not vote on the adoption of that position by the Town Council. While it is a practice that I sign such letters, it is not a requirement of Town law. It has been my position since starting to work with the County that I do not sign letters conveying the Town Council's position to the County that in any way seeks to influence County actions. I intend to continue this practice.

Though it may not have been the intent, the letter seems to leave open the possibility that Mr. Fosselman will interact from time to time with Montgomery County Government staff and elected officials as the Mayor and be signing letters to the County that he believes do not "seek to influence County actions."

Mr. Fosselman also states:

. . . any such potential [conflict of interest] can be addressed by the practices that I have described in this letter by avoiding work on any matter that comes before me as a County employee where the Town is a party to, or has a significant interest in the matter ***and if this is not practicable***, [emphasis added] by not participating on behalf of the Town in the matter.

The language used in the request letter does not foreclose that there could be circumstances where it could be impracticable for Mr. Fosselman to avoid working on a matter that comes before him as a County employee where the Town is a party to or has a significant interest in the matter.

While the vast majority of the request letter appropriately details the extent to which Mr. Fosselman will commit to avoiding any conflict of interest, the examples reflect some ambiguity in the extent of his separation from Town matters involving the County and County matters involving the Town. In addition, while the Chief Administrative Officer concurred in and supported the waiver request, he indicated with reference to the request that "the subtle obligations involved in performing his duties as Mayor while also working as the White Oak Science Gateway Coordinator performing duties such as: representing, marketing, advocating for and being the face of White Oak Science Gateway become more complicated the longer both positions are held by the same person." The implication is that avoiding conflicts of interest between the County service and the position of Mayor could be "complicated."

In an effort to simplify and make clear the nature of the steps Mr. Fosselman would take to avoid conflicts of interest, Ethics Commission staff contacted Mr. Fosselman. Mr. Fosselman committed to the following:

In my capacity as a Montgomery County employee, I will not participate in any matter that affects the Town of Kensington (in a way that is distinct from the effect of the matter on the general public); In my capacity as the Mayor of the Town of Kensington, I will not be involved in any representation of the Town to the County or otherwise work on dealings requiring County involvement or approval.

Pursuant to § 19A-8(b)(3) of the Public Ethics Law, the Ethics Commission may grant a waiver of the prohibition of § 19A-12(b) if the Ethics Commission concludes that the proposed employment is not likely to create an actual conflict of interest. Upon a review of the request and the concurrence in and support for the waiver request of the Office of the County Executive, the Commission finds that there is no actual conflict of interest as long as Mr. Fosselman abides his commitments, which are a condition of granting this waiver. Pursuant to the standard in § 19A-8(b)(3), the Commission grants the waiver of the prohibition of § 19A-12(b).

In reaching this decision, the Commission has relied upon the facts as presented by Mr. Fosselman.

For the Commission:



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Steven Rosen, Chair